

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES VINCENT BANKS,

Plaintiff(s),

v.

JOSEPH LOMBARDO, et al.,

Defendant(s).

Case No. 2:20-cv-00556-APG-NJK

Order

[Docket No. 18]

Pending before the Court is Defendant Gregory Bryan's motion for more definite statement or to strike. Docket No. 18. Plaintiff has not filed a response. The motion is properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion is **DENIED** in its entirety.

I. MOTION FOR MORE DEFINITE STATEMENT

The pending motion primarily seeks issuance of an order requiring a more definite statement. A motion for a more definite statement is made pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, which requires the filing of an amended pleading where the initial pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." Hence, the rule "is designed to strike at unintelligibility, rather than want of detail." *Woods v. Reno Commodities, Inc.*, 600 F. Supp. 574, 580 (D. Nev. 1984).

Motions for a more definite statement are disfavored and rarely granted. *Herd v. Cnty. of San Bernadino*, 311 F. Supp. 3d 117, 1162 (C.D. Cal. 2018). A motion for more definite statement must be considered in light of the modest pleading standards required by the Federal Rule of Civil Procedure. *Id.* Similarly, when analyzing the pleading of a *pro se* plaintiff, courts are particularly

1 mindful that such filings must be construed in a liberal manner. *See, e.g., Beckner v. El Cajon*
 2 *Police Dept.*, 2007 WL 2873406, at *2 (S.D. Cal. Sept. 28, 2007).

3 Although a defendant may not be prohibited from filing a motion for more definite
 4 statement following issuance of an order screening a *pro se* prisoner's complaint, *see Harris v.*
 5 *Ford*, 32 F. Supp. 2d 1109, 1111 (D. Alaska 1999) (*dicta*), a court's ability at the screening phase
 6 to discern sufficient allegations for the plaintiff to state a claim would generally indicate that the
 7 complaint is not so unintelligible that a responsive pleading cannot be filed, *see, e.g., Sherman v.*
 8 *Aguilar*, 2011 WL 832263, at *2 (S.D. Cal. Mar. 3, 2011) (noting that the "Court was not at all
 9 confused" by the complaint as evidenced by the issuance of an extensive screening order providing
 10 notice to the defendants as to the claims against them); *Pamer v. Schwarzenegger*, 2010 WL
 11 785851, at *2 (E.D. Cal. Mar. 4, 2010) (finding the complaint sufficiently understandable to
 12 survive a motion for more definite statement because, "[a]s the court previously determined [in the
 13 screening order], Plaintiff's complaint raises issues relating to his medical care, failure to protect,
 14 and retaliation. While Plaintiff's claims may not be eloquently stated, they are sufficiently set
 15 forth as to be understandable").

16 In this case, United States District Judge Andrew P. Gordon issued an extensive screening
 17 order providing detailed discussion as to the allegations made against Defendant Bryan. *See, e.g.,*
 18 Docket No. 5 at 16-17.¹ Having reviewed the complaint for purposes of the instant motion, the
 19 Court also finds here that Plaintiff's allegations are not so unintelligible that a more definite
 20 statement is warranted.

21 **II. MOTION TO STRIKE**

22 Defendant Bryan's motion makes passing references to "alternative" relief in the form of
 23 striking allegations made in the complaint. *See, e.g.,* Docket No. 18 at 1. The precise nature of
 24 this request is unclear. At some points in the motion, it appears that Defendant Bryan is simply
 25 seeking an instruction to Plaintiff that failure to comply with an order granting a motion for more
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27 ¹ Since that screening order was issued, another defendant prepared and filed an answer to
 28 the complaint. Docket No. 14; *but see* Docket No. 18 at 2 (motion for more definite statement
 arguing that Plaintiff's allegations make it impracticable for "any possible defendant responding").

1 definite statement may result in striking. *See* Docket No. 18 at 6 (“Banks should be required to
 2 file a more definite statement, or, if he is not inclined, [the Court should] strike the allegations
 3 against Dr. Bryan”); *see also* Fed. R. Civ. P. 12(e).² This request is moot given that the Court is
 4 denying the motion for more definite statement.

5 At other points in the motion, Defendant Bryan appears to seek to strike portions of the
 6 complaint pursuant to Rule 12(f) of the Federal Rules of Civil Procedure as being redundant,
 7 immaterial, or impertinent. *See* Docket No. 18 at 4-5, 6. “Modern litigation is too protracted and
 8 expensive for the litigants and the court to expend time and effort pruning or polishing the
 9 pleadings.” 5C Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE §
 10 1382, at p. 458 (2020 Supp.). As such, the federal case reporters abound with pronouncements
 11 that motions to strike are highly disfavored, *e.g.*, *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959,
 12 965 (9th Cir. 2014), are rarely granted, *e.g.*, *Stanbury Law Firm v. I.R.S.*, 221 F.3d 1059, 1063 (8th
 13 Cir. 2000) (*per curiam*), and are commonly viewed as “time-wasters,” *e.g.*, *Gaines v. AT&T*
 14 *Mobility Servs., LLC*, 424 F. Supp. 3d 1004, 1014 (S.D. Cal. 2019).

15 Although the motion addresses some of the applicable standards for a motion to strike
 16 under Rule 12(f), Docket No. 18 at 4-5, it does not meaningfully explain how those standards
 17 would warrant striking in the circumstances of this case. For example, the motion does not explain
 18 how the Court could conclude that Plaintiff’s colorable claims against Defendant Bryan that were
 19 just found sufficient to survive the screening process should now be stricken as consisting entirely
 20 of impertinent or immaterial allegations. *See* Fed. R. Civ. P. 12(f); *but see* Docket No. 18 at 1
 21 (“Banks’ counts suing Dr. Bryan should be stricken”).³ Nor does the motion address the case law
 22 requiring a showing of prejudice given the disfavored status of a Rule 12(f) motion to strike. *See*

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 24 ² Such a request would not be “alternative” relief from the motion for more definite statement, but would be part and parcel of the motion for more definite statement.

25 ³ The motion does not identify particular allegations that Defendant Bryan seeks to strike,
 26 instead relying on vague references to the existence of “largely immaterial” allegations or similar
 27 assertions. Docket No. 18 at 6. The motion at times appears to ask the Court to *sua sponte* edit
 28 out portions of the complaint. *Id.* at 7. The Court declines that invitation. *Cf. Davis v. Ruby*
Foods, Inc., 269 F.3d 818, 820 (7th Cir. 2001) (motions to strike brought pursuant to Rule 12(f)
 should not be used in a manner that transforms judges into “editors, screening complaints for
 brevity and focus; they have better things to do with their time”).

1 *Roadhouse v. Las Vegas Metro. Police Dept.*, 290 F.R.D. 535, 543 (D. Nev. 2013); *see also*
2 *Mitchell v. Nev. Dept. of Corr.*, No. 2:16-cv-00037-RFB-NJK, 2017 U.S. Dist. Lexis 59072, at *2
3 (D. Nev. Apr. 18, 2017) (“Especially with respect to filings of *pro se* litigants who may be
4 unfamiliar with the technical aspects of the applicable rules, the Court does not find it be a useful
5 expenditure of resources to entertain motions to strike without any showing of prejudice”).

6 Given the lack of meaningfully developed argument as to the Rule 12(f) striking request,
7 this aspect of the motion will be denied. *E.g., Kor Media Grp., LLC v. Green*, 294 F.R.D. 579,
8 582 n.3 (D. Nev. 2013).

9 **III. CONCLUSION**

10 Accordingly, Defendant’s motion for more definite statement or to strike is **DENIED**.
11 Defendant Bryan must file a response to the complaint by August 25, 2021.

12 IT IS SO ORDERED.

13 Dated: August 11, 2021

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17 Nancy J. Koppe
18 United States Magistrate Judge
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